

Limited Legal Services in Removal Proceedings

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Overview

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- Final rule at 87 FR 56247 makes changes to 8 CFR 1001 and 1003
- Rule will become effective 11/14/2022
- Allows practitioners to provide limited legal assistance to individuals in proceedings before EOIR without having to become the official practitioner of record
- For *every* document/form filed with EOIR that a practitioner helps to prepare, practitioner will need to file a limited appearance form (E-60 (BIA) / E-61 (IJ))
- Rule does not apply to non-practitioners

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Background

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NWIRP, a nonprofit Washington public benefit corporation, and Yuk Man Maggie Cheng v. Jefferson B. Sessions, III, USDOJ, EOIR, Juan Osuna, and Jennifer Barnes, 2:17-cv-00716-RAJ (W.D. Wash.)

- filed May 8, 2017
- terminated September 22, 2022

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Who is affected by this rule?



- Rule only applies to “practitioners” helping pro se individuals in removal proceedings with *document assistance*, regardless of whether the practitioners’ work related to those documents constitutes “practice” or “preparation”
- What triggers the obligation to enter a limited appearance is helping with documents *of any kind* that will be filed with EOIR
- Providing legal advice or engaging in a legal consultation *without* helping with documents does not require entering an appearance, full or limited

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Who is a “practitioner”?



- 8 CFR 1001.1(ff):
 - An attorney, per 8 CFR 1001.1(f), who does not represent the federal government
 - A representative, as defined in 8 CFR 1001.1(j)
 - Law students & law graduates
 - Fully accredited representatives
 - Reputable individuals
 - Accredited officials

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What is “document assistance”?



Helping a pro se respondent with the drafting, completion, or filling in of blank spaces of a motion, brief, form, or other document or set of documents intended to be filed with EOIR—essentially, drafting, completing, or filling in *any* filing of any kind with EOIR (change of address forms, etc.)

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“Practice” and “Preparation”

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- “Practice” is “exercising professional judgment to provide legal advice or legal services related to any matter before EOIR”
 - Not all “practice” triggers the obligation to enter an appearance with EOIR
- “Preparation” refers to the filling in of blank spaces on a pre-printed form to be filed with EOIR with information provided by the noncitizen
 - Any “preparation” *does* trigger the obligation to enter an appearance with EOIR *if* done by practitioner

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Full representation: duties & responsibilities

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- Practitioner of record:
- Must file E-27 or E-28
 - Must appear before EOIR on behalf of respondent
 - Must file all documents on behalf of respondent with EOIR
 - Must accept mail/service of process of all documents filed in proceedings, including notices of hearing
 - Authorized to view record of proceeding
 - Must file motion to withdraw or substitute if ceasing representation and must wait for IJ/BIA to grant it
 - Can appear to represent before removal proceedings only, bond/custody proceedings only, or both

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Limited appearances: duties & responsibilities

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- Practitioner entering limited appearance:
- Can provide legal advice with document assistance, but may not appear in court
 - Must file E-60/61 for *every* document/brief/motion/filing made with EOIR *at the same time* the document is filed
 - Just one E-60/61 suffices for a set of docs filed together

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Limited appearances: duties & responsibilities (cont.)



- Must also complete preparer box information where relevant
- Must also self-identify on the documents which they helped prepare by placing
 - 1) name and 2) signature on the document

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Limited appearances: limitations



- Cannot view EOIR record of proceeding for respondent
- Cannot receive mail for respondent
- Not needed for providing legal advice—only for preparation or submission of documents for the court

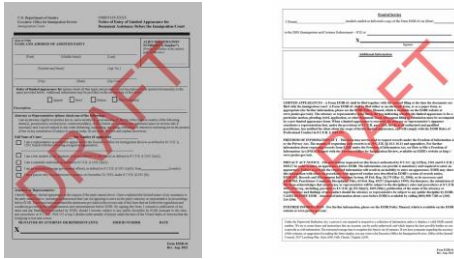
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EOIR-60



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EOIR-61 New York
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Discipline New York
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- Practitioners continue being subject to EOIR's Rules of Professional Conduct
- Practitioners will be subject to discipline for, inter alia, "repeatedly" failing to enter the proper appearance form. 8 C.F.R. 1003.102(t)
 - Clarifies a single instance of failing to enter a limited appearance form isn't enough to result in discipline
- Practitioners also subject to discipline for repeatedly drafting notices, etc., that rely on boilerplate language and reflect little to no attention to the specifics of the case
- New ground for discipline created at 8 CFR 1003.102(w), which requires practitioners to sign documents in accordance with EOIR rules/instructions

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Non-Practitioners New York
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- May assist pro se individuals with the "preparation" of documents—the filling in of blank spaces on printed forms with information provided by the applicant or petitioner—that are to be submitted to EOIR, but may **not** engage in any "practice"
 - If the assistance requires *both* preparation and practice, cannot assist
- Rule sets out expectation that fees charged for such service be "nominal"

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Other Impact? Northern
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- Does not change or impact DHS rules
 - but given ability to mark limited purpose that should not be an issue
- Does not impact ability to appear as Friend of the Court
 - prefatory language expressly provides that Friend of the Court programs may continue and don't require entry of appearance

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Q&A

Matt Adams: matt@nwirp.org
 Glenda M. Aldana Madrid: glenda@nwirp.org

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